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September 22, 2023

VIA ECF

Honorable Paul A. Engelmayer
United States District Court
Southern District of New York
40 Foley Square, Room 2201
New York, NY 10007

Re: *Kitchen Winners NY Inc. v. Rock Fintek LLC*, Case No. 22-cv-05276-PAE
**Joint Letter Motion for Extension of October 15, 2023 Discovery Deadline
and for Entry of a Proposed Expert Discovery Schedule**

Dear Judge Engelmayer:

This firm represents defendant and counterclaim/third-party plaintiff Rock Fintek LLC. Rock Fintek respectfully submits this letter jointly with the Adorama Parties¹ and JNS Parties² pursuant to paragraph 2.C of Your Honor's Individual Practices in advance of filing a motion to extend the October 15, 2023 discovery deadline in this case through November 16, 2023, and for an entry of an expert discovery schedule as detailed below. In support, Rock Fintek states as follows:

Parties' Discovery Efforts

Following a contentious exchange of letters by the parties in connection with Rock Fintek's previous request to extend the discovery deadline, on August 2, 2023, the Court extended the discovery deadline to October 15, 2023. *See* ECF Nos. 96-101. The parties have since diligently engaged in discovery among each other and with third-parties, including:

- Parties have exchanged supplemental written discovery requests and responses.
- Parties have issued subpoenas to non-parties, including Medline Inc., Arik Maimon, Chunrong Li, Ironlink Logistics, UL LLC, and AMCM Glove LLC.
- Parties have been negotiating scope of production and deposition scheduling with non-parties Medline Inc., Ascension Health and Ironlink Logistics.

¹ Kitchen Winners NY Inc., Adorama Inc., and Joseph Mendlowitz.

² JNS Capital Holdings, LLC and Joel Stern.

- On August 29, 2023, JNS Parties and Adorama Parties took the deposition of Rock Fintek's CFO Bradley Gilling.
- On September 11, 2023, Rock Fintek served an amended damages disclosure and made a supplemental document production.
- On September 12 and September 18, the parties took the deposition of Alex King of Dimerco Logistics, which provided logistics services for Rock Fintek at pertinent times.
- Additional depositions have been scheduled as follows: October 3 (Thomas Kato/Rock Fintek Fed. R. Civ. P. 30(b)(6) designee), October 10 (Joseph Medlowitz); October 11 (Mendel Banon); October 12 (Hershey Weiner); and October 13 (Joel Stern).
- On September 20, 2023, Adorama Parties made a second amended Rule 26 disclosure, identifying an additional material witness, whose deposition the parties are in the process of scheduling.

Recent Developments Underlying this Request

On September 18, 2023, Google LLC made a production of email header information in response to Rock Fintek's subpoena (served on July 31, 2023), which revealed the existence of thousands of email communications between 9/1/2020 and 12/31/2021, involving Hershey Weiner, Joel Stern, Mendel Banon, representatives of MedCare glove manufacturers, and others, which had not been previously produced.

On September 19, Rock Fintek's counsel sent email correspondence to counsel for the JNS and Adorama parties taking the position that the header information produced by Google reflects, among other things, incompleteness in the Adorama Parties' and JNS Parties' document productions to date. Counsel for the Adorama Parties and JNS Parties have denied any discovery deficiencies and do not concede the relevance of communications reflected in the Google subpoena, but have agreed to re-visit their respective clients' document searches.³

On September 21, JNS Parties made a supplemental production containing, after deduplication, approximately 4,400 emails and attachments (totaling more than 14,000 pages). On September 20 and 22, counsel Rock Fintek and Adorama Parties met and conferred, and have agreed on certain parameters for the Adorama Parties' counsel to conduct searches and review of previously unproduced documents. Counsel for the Adorama Parties has agreed to make any supplemental production by September 29, 2023 or as soon thereafter as possible.

In addition, the parties continue to pursue documents from and depositions of third parties, including Medline, Ascension Health, Ironlink Logistics, Arik Maimon, Mendel Banon, and others. Given the number of party and non-party depositions that remain to be completed, as well as the anticipated document productions that will need to be reviewed in advance of those

³ At this time the parties are making efforts to reach an amicable resolution of the issues raised by Rock Fintek following the Google subpoena response, and are requesting the extension herein to facilitate those efforts. All parties reserve and do not waive any rights, positions or arguments in relation to any discovery disputes that may exist presently or in the future.

depositions, there are simply not enough days left prior to October 15 (which happens to be a Sunday) to complete discovery in this matter.

Finally, Rock Fintek's undersigned counsel respectfully reminds this Court that he is scheduled to start a trial on November 6, 2023.

Accordingly, the parties respectfully request that the Court extend the fact discovery deadline in this case to and including **November 16, 2023** in order to allow the parties to substantially complete document discovery and to review newly produced materials prior to conducting pertinent depositions.

Proposed Expert Discovery Schedule

In addition, the parties have conferred regarding anticipated expert discovery and have agreed upon a proposed schedule to follow the close of fact discovery. Rock Fintek expects to disclose expert testimony regarding the chemical and physical qualities of the gloves at issue; testimony from a statistician regarding sampling adequacy; and percipient expert testimony regarding the value of Rock Fintek's lost business. Adorama Parties expect to introduce rebuttal expert testimony. To that end, the parties propose that the Court enter the following expert disclosure schedule: **December 18, 2023** for initial reports by party with the burden of proof; **January 18, 2024** for rebuttal reports; and **February 9, 2024** for close of expert discovery including depositions.

Finally, counsel for JNS Parties, Adorama Inc. and Joseph Mendlowitz has expressed an intention to seek to move for summary judgment after close of fact discovery, but prior to close of expert discovery. Rock Fintek takes no position regarding the timing of these intended motions, but reserves all rights in substantively opposing the same.

Accordingly, the parties respectfully request that the Court allow the sought extension of fact discovery through November 16, 2023, and enter an order setting the proposed expert discovery schedule or, alternatively, schedule an informal telephonic conference regarding same.


Respectfully submitted,

/s/Phillip Rakhunov
Phillip Rakhunov

In light of the above disclosures, the Court will grant an extension of the fact discovery deadline to November 16, 2023. Further, although the parties have provided little reason to extend the deadline for the close of expert discovery to February 9, 2024, nearly three months after the close of fact discovery and three months after the previously set deadline for expert discovery, because the parties agree as to this expert discovery schedule, and cognizant of the intervening holiday season, the Court will likewise adopt the deadlines proposed for expert discovery, to be completed no later than February 9, 2024. The Court adjourns the next case management conference to March 5, 2024 at 3 p.m. The parties are on notice, however, that in light of this lengthy extension, on top of previous extensions granted, there will be no further extensions absent truly extraordinary circumstances.

SO ORDERED.

Dated: September 25, 2023


PAUL A. ENGELMAYER
United States District Judge